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14
15 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
16 **SAN FRANCISCO-OAKLAND DIVISION**

17 SIERRA CLUB and SOUTHERN BORDER
18 COMMUNITIES COALITION,

19 *Plaintiffs,*

20 v.

21 DONALD J. TRUMP, President of the United
States, in his official capacity; MARK T. ESPER,
22 Secretary of Defense, in his official capacity;
CHAD F. WOLF, Acting Secretary of Homeland
23 Security, in his official capacity; and STEVEN
MNUCHIN, Secretary of the Treasury, in his
24 official capacity,

25 *Defendants.*
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27
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Case No.: 4:19-cv-00892-HSG

**STIPULATED REQUEST FOR
ORDER DISMISSING WITHOUT
PREJUDICE PLAINTIFFS'
TREASURY FORFEITURE FUND
CLAIMS**

Pursuant to Local Rule 7-12, Plaintiffs and Defendants in the above-captioned case stipulate and agree as follows:

1. Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief, ECF No. 26, identifies three different sources of federal funds from which Defendants directed money be diverted to fund the construction of border barriers on the United States-Mexico border.

2. Plaintiffs' First Amended Complaint alleges that Defendants' diversion of \$601 million from the Treasury Forfeiture Fund ("TFF"), one of the three funding sources at issue in this case, would harm Plaintiffs by enabling construction of border walls on lands where Plaintiffs' members live, work, and recreate, and by forcing Plaintiffs and their member organizations to divert resources to challenge and remedy these harms. Plaintiffs' First Amended Complaint alleges that Defendants' diversion of funds under 31 U.S.C. § 9705 to augment border wall funding otherwise expressly limited and restricted by Congress violates the Consolidated Appropriations Act of 2019, the Constitution's separation of powers, the Appropriations Clause, the Presentment Clause, and is *ultra vires*. ECF No. 26 ¶¶ 138–190.

3. In September 2019, the Department of the Treasury transferred \$600,993,368.26 to U.S. Customs and Border Protection ("CBP") for border wall construction. *See* Defs.' Notice Regarding Use of the Treasury Forfeiture Fund, ECF No. 209 (Oct. 3, 2019).

4. On January 8, 2020, Defendants filed an additional notice regarding use of the TFF, stating that CBP has made decisions as to how to use \$340 million of the TFF funds diverted. *See* Declaration of Loren Flossman ¶ 7, ECF No. 266 (Jan. 8, 2020). All \$340 million will be used to support border wall projects in Border Patrol's Rio Grande Valley Sector. *Id.* The majority of this money, \$216 million, will be used for construction management, to cover increased project costs, and for real estate planning for projects otherwise funded by congressional appropriations. *Id.* ¶ 7.b. The remaining balance of approximately \$124 million will be used to exercise contract options for otherwise planned barrier projects known as RGV 09 and RGV 10. *Id.* ¶ 7.a. Both projects had

1 previously been funded exclusively with funds appropriated in the Fiscal Year 2019 CBP
2 appropriation (Public Law No. 116-6 ¶ 230). *Id.* In RGV 09, approximately \$11 million in TFF
3 funds are intended to enable CBP to increase the height of a previously planned segment in Starr
4 County, Texas, from 18 feet to 30 feet. *Id.* In RGV 10, approximately \$113 million in TFF funds
5 are intended to add approximately 10 miles of barrier to a previously planned and otherwise funded
6 project in Hidalgo and Cameron Counties, Texas. *Id.*

7
8 5. CBP has represented that it will not begin construction on the RGV 09 and RGV 10
9 projects, including the portions of those projects funded with TFF funds, until it has acquired
10 sufficient real estate, and does not anticipate having sufficient real estate prior to July 2020. Notice
11 Regarding Use of TFF Funds, ECF No. 266, at 3 (Jan. 8, 2020).

12 6. CBP intends to use the remaining balance of approximately \$261 million in TFF
13 funds for real estate planning activities for future year barrier construction in the United States
14 Border Patrol's priority locations along the southwestern border. Declaration of Loren Flossman,
15 ECF No. 266, ¶ 9 (Jan. 8, 2020). Defendants have not provided additional information as to the
16 location or timing of specific projects that would receive additional funding.
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18 7. Based upon these sworn representations, the parties agree that Plaintiffs' claims as
19 set forth in the First Amended Complaint regarding the diversion of funds from the TFF shall be
20 dismissed without prejudice.

21 8. THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the
22 parties, subject to the Court's approval, that Plaintiffs' claims regarding the diversion of funds from
23 the TFF under 31 U.S.C. § 9705 shall be dismissed without prejudice.
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25 A proposed order is attached.
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Dated: February 5, 2020

Respectfully submitted,

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DECLARATION

I declare, under penalty of perjury, that the factual assertions contained in this stipulation are true and correct to the best of my knowledge.

/s/ Dror Ladin